

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

RSA No.4354 of 2013 (O&M).
Date of Decision: 15.12.2015.

Shashi Devi and othersAppellants.
VERSUS
Ram Singh and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Parminder Singh-I, Advocate for the appellants.

SNEH PRASHAR, J.

1. This was Regular Second Appeal filed by appellants-plaintiffs Shashi Devi and others (hereinafter referred to as the “appellants”) impugning the judgment and decree dated 21.01.2012 passed in Civil Suit No.159 of 2009 by learned Civil Judge (Junior Division), Karnal, dismissing the suit for declaration and permanent injunction filed by plaintiffs Mahinder (since deceased) through his L.Rs. and others against respondents-defendants Ram Singh and others (hereinafter referred to as the “defendants”), which was upheld by the first appellate Court vide judgment and decree dated 16.05.2013.

2. The facts which need recapitulation are as under:-

In the suit for declaration and permanent injunction filed by the plaintiffs-appellants, it was pleaded that Smt. Bhoi Devi was owner-in-possession of half share of land measuring 260 Kanals 19 Marlas as

detailed in Para No.1 of the plaint, situated in village Amritpur Khurd, Tehsil and District Karnal (hereinafter referred to as the “suit land”). Smt. Bhoi Devi died issueless and the suit land was inherited by their (plaintiffs') father Antu who was the only legal heir of Bhoi Devi. The other legal heir of Bhoi Devi namely Malkhan Singh died issueless and the entire suit land was being cultivated by Antu and after him the same is in their (plaintiffs') possession.

It was further averred by the plaintiffs that the respondents managed to get executed a sale deed dated 25.01.1968 in their favour with regard to 1/4th share out of the share of Bhoi Devi by using fraudulent means. Neither any sale consideration amount was paid to Bhoi Devi nor she executed the sale deed or delivered physical possession of the suit land to the respondents. The revenue entries continued to be recorded in the name of Bhoi Devi and no mutation was sanctioned on the basis of the alleged sale deed. Bhoi Devi died on 20.11.1969 and even before her death, they (plaintiffs) had been in cultivating physical possession of the suit land. Assailing the sale deed as a waste paper/fraudulent document, the plaintiffs prayed for declaration of their ownership rights as well as prayed for an injunctive order restraining the respondents from alienating the suit land and from interfering in their possession illegally and forcibly.

3. The respondents contested the suit. In the written statement filed by them, they pleaded that the sale deed dated 25.01.1968 was duly executed and got registered by Bhoi Devi on payment of sale consideration amount and during her lifetime it was neither challenged by her nor by

Antu, father of the plaintiffs. The respondents denied that the plaintiffs are legal heirs of Bhoi Devi or are in possession of the suit land. They also submitted that the present suit filed after a period of 38 years is hopelessly barred by limitation. According to the respondents, Smt. Bhoi Devi delivered to them possession of the land purchased vide sale deed dated 25.01.1968 and bequeathed her remaining 1/4th share in favour of one Latur Singh. Nothing out of the suit land was inherited by Antu. Mutation No.1594 on the basis of the sale deed was said to have been sanctioned on 17.10.2006. The said mutation was very much in the knowledge of Antu, father of the plaintiffs, but he challenged only Mutation No.1595 sanctioned in favour of Latur Singh and did not challenge Mutation No.1594. In that manner, he admitted possession and ownership of the respondents over the suit land. Claiming to be absolute owners of the suit land, the respondents prayed for dismissal of the suit.

4. A replication was filed by the plaintiffs controverting the objections raised by the respondents and reasserting their claim as put forth in their plaint. On the rival contentions of the parties, following issues were framed:-

- (1) Whether the plaintiffs are entitled for a decree for declaration with a consequential relief of permanent injunction as prayed for? OPP.
- (2) Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD.
- (3) Whether the suit is not maintainable in the present form? OPD.
- (4) Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.

(5) Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD.

(6) Whether the suit is hopelessly time barred? OPD.

(7) Relief.

5. Plaintiffs as well as the respondents adduced ocular as well as documentary evidence.

6. Considering the submissions made on behalf of the parties and the evidence produced by them, learned trial Court finding that the suit is hopelessly time barred as it was instituted after a gap of 38 years from the date of execution of the impugned sale deed dated 25.01.1968 and that the sale deed was never challenged by Smt. Bhoi Devi herself or by her sole legal heir Antu, father of the plaintiffs, dismissed the suit of the plaintiffs.

7. Plaintiffs preferred an appeal against the judgment and decree dated 21.01.2012 passed by learned trial Court which was dismissed by learned Additional District Judge, Karnal vide judgment and decree dated 16.05.2013.

8. Feeling aggrieved, the appellants have filed the instant Regular Second Appeal.

9. The submissions made by Mr. Parminder Singh-I, learned counsel representing the appellants have been considered.

10. It is not a matter in issue that Smt. Bhoi Devi was owner of half share in the suit land and that she died issueless on 14.11.1969 as per her death certificate Ex.P1. The impugned sale deed dated 25.01.1968 had been challenged by the plaintiffs on the ground that it was an outcome of fraud played on Smt. Bhoi Devi. Needless to say that the onus was squarely on

the plaintiffs to prove the said allegation. However, what to say of producing substantive and reliable evidence in that regard even no specific particulars of fraud were either pleaded or proved by the plaintiffs. The findings of learned first appellate Court on the issue are as under:-

“The plaintiffs had challenged the sale deed on the ground of fraud but no specific instances of fraud were given by them in their pleadings. It is settled law that all the particulars of fraud should be specifically given in the plaint and the person who pleads fraud is required to prove the same by placing the cogent material on the record. The plaintiffs had examined the witnesses who had either not born at the time when the impugned sale deed was executed or were of tender age and so they could not have deposed about the alleged fraud committed by the defendants on the Bhoi Devi. Mere assertion of plaintiffs that Bhoi Devi had not executed the impugned sale deed and she had not thumb marked the impugned sale deed, is not sufficient to hold that the sale deed is result of fraud. The plaintiffs would have got the thumb impressions of Bhoi Devi on the impugned sale deed compared with her admitted thumb impressions but no such effort was made by them. They argued that as the original sale deed was not produced, comparison of thumb impressions was not possible but this contention of appellant-plaintiffs is devoid of any merits as the true copy of the sale deed having original thumb impressions is always available in the office of Sub Registrar also and if the plaintiffs would have intended to get the thumb impressions compared, they could have got the disputed thumb impressions from the record of Sub Registrar. Thus, the appellant-plaintiffs could not establish the grounds of fraud. As far as the contention of appellant-plaintiffs that the possession was not delivered to the defendants and they are in possession of the suit property is concerned, the same is also devoid of any merits. The revenue record

continued in the name of Bhoi Devi even after her death and so the revenue record which continued in the name of a dead person cannot be believed in respect of the entry of possession. After the sanctioning of mutation in favour of defendants, the possession of defendants has been shown in the suit property. Thus, the plaintiffs are not proved to be in possession of the suit property at any point of time. Hence, on this ground also, the sale deed cannot be set aside.”

11. The registered sale deed is a public document. The endorsement of Sub Registrar carries presumption of correctness under Section 60(2) of the Registration Act. The plaintiffs having failed to prove any specific instance of fraud, the sale deed on their mere oral assertion that it was a result of fraud, could not be set aside.

12. In addition to the above, it was pleaded and proved by the plaintiffs that Bhoi Devi had bequeathed her 1/4th share in favour of one Latur Singh in respect of which Mutation 1595 was sanctioned. Antu, father of the plaintiffs challenged Mutation No.1595. Learned first appellate Court mentioned in Para No.14 of the judgment that a perusal of the order dated 22.07.1992 Ex.D1 of Commissioner, Rohtak Division, Rohtak shows that Antu and Malkhan Singh were parties to the litigation relating to Mutation No.1595. The Mutation No.1594 entered on the basis of the sale deed executed by Bhoi Devi in favour of the respondents was also brought to the notice of the Court in that litigation and it was observed by the Commissioner, Rohtak Division that the said Mutation No.1594 was also contested by both the parties. The said observations in the order of the Commissioner clearly indicate that Mutation No.1594 was well within the

knowledge of Antu when order dated 22.07.1992 Ex.D1 was passed. The order dated 22.04.1998 Ex.D2 and the order dated 09.10.1986 Ex.D3 passed by the Collector, Karnal prove that Mutation No.1594 was in the knowledge of Antu etc. Admittedly, what to say of Bhoi Devi even Antu did not challenge the impugned sale deed and Mutation No.1594 sanctioned on the basis of the same during his lifetime. It is after 38 years of execution of the sale deed that the plaintiffs filed the present suit assailing the same which is patently barred by limitation.

In the above premise, firstly the plaintiffs failed to prove that the impugned sale deed was based on fraud. Secondly, as per Articles 58 and 59 of the Limitation Act, a suit for declaration that the sale deed is null and void can be filed within three years from the date of accrual of cause of action. Since it stands proved that Antu had knowledge about the impugned sale deed but he did not opt to challenge the same within three years from the date of his knowledge, the suit of the plaintiffs, who stepped into the shoes of Antu, filed after 31 years of execution of the impugned sale deed is hopelessly barred by limitation. Accordingly, the consistent findings of learned trial Court as well as learned first appellate Court are upheld. There being no substantial question of law to be determined by this Court and the appeal being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

15.12.2015
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